

E-FILED - 11/30/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAUL UVALLES,

No. C 09-5221 RMW (PR)

Plaintiff,

ORDER ADDRESSING PENDING
MOTIONS

v.

FRANCISCO JACQUEZ, Warden, et al.,

Defendants.

(Docket Nos. 74, 86 and 97)

Plaintiff, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials. Before the court are plaintiff's motions to appoint counsel and extension of time to locate unserved defendants, and defendants' motion for extension of time to file their dispositive motion.

Plaintiff's motions for appointment of counsel are DENIED for want of exceptional circumstances. See Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997); see also Lassiter v. Dep't of Social Services, 452 U.S. 18, 25 (1981) (there is no constitutional right to counsel in a civil case). The issues in this case are not particularly complex and plaintiff has thus far been able to adequately present his claims. This denial is without prejudice to the court's sua sponte appointment of counsel at a future date should the circumstances of this case warrant such appointment.

Plaintiff also seeks an extension of time to locate unserved defendants. On May 11, 2010, the court ordered service of the stated cognizable claims in plaintiff's amended complaint upon

1 named defendants. On June 23, 2010, the court received ten summons which were returned
 2 unexecuted. On August 17, 2010, the court received three more summons which were returned
 3 unexecuted. Specifically, defendants RN C. Duncan and RN P. Crinklaw were not served because
 4 the facility needed more information. Also, Correctional Officer D. DeWitt, Correctional Officer F.
 5 Palaccio, Correctional Officer Stout (ISU), Sergeant Henderson, Correctional Officer J. Gonzalez,
 6 Correctional Officer J. Shaw, Correctional Officer B. Carter, Correctional Officer J. Johnson, D.
 7 Fabela, B. Jones and J. Hernandez were not served because more than one employee had similar
 8 names or no longer at the facility.

9 On September 13, 2010, plaintiff provided additional information to allow the Marshal
 10 Service to locate unserved defendants. With this information, the United States Marshal's Service
 11 shall re-serve the following Pelican Bay State Prison defendants, including the additional
 12 information provided by plaintiff.

- 13 1. Defendant R.N. Charles Duncan, MPIMSCMD, U.T.A. Acute Care who was
 14 employed on February 11, 2009, as M.T.A. and called at 4:05 a.m., to D SHU
 15 Contraband Surveillance Watch to assess plaintiff's medical condition:
- 16 2. Defendant R.N. Paula Crinklaw, MPIMAPAC2, F.N.P., employed on April 10, 2009,
 17 at 10:52 a.m., in which plaintiff was housed in Pelican Bay's administration
 18 segregation unit B-06;
- 19 3. Defendant Correctional Officer D. DeWitt, employed on February 10, 2009, first
 20 watch, 2:00 p.m. to 10:00 p.m., assigned to D SHU Contraband Surveillance Watch;
- 21 4. Defendant Correctional Officer F. Palaccio, employed February 11, 2009, second
 22 watch, 10:00 p.m. to 6:00 a.m., assigned to D SHU Contraband Surveillance Watch;
- 23 5. Defendant Correctional Officer J. Stout, employed on February 10, 2009, second
 24 watch, 6:00 a.m. to 2:00 p.m., assigned to Institutional Gang Investigations;
- 25 6. Defendant Sgt. Henderson, (female) employed October 23, 2008, third watch, 2:00
 26 p.m. to 10:00 p.m., assigned to C SHU Contraband Surveillance Watch;
- 27 7. Defendant Correctional Officer J. Gonzalez, employed on October 26, 2008, first
 28 watch, 10:00 p.m. to 6:00 a.m., assigned to C SHU Contraband Surveillance Watch;

8. Defendant Correctional Officer J. Shaw, employed on October 27, 2008, second watch, 6:00 a.m. to 2:00 p.m., assigned to D SHU Contraband Surveillance Watch and is currently a sergeant;

9. Defendant Correctional Officer B. Cater, employed on October 23, 2008, second watch, 6:00 a.m. to 2:00 p.m., assigned to B Yard as acting Sergeant. This defendant may have worked the third watch and escorted plaintiff to C SHU Contraband Surveillance Watch; and,

10. Defendant Correctional Officer J. Johnson, (female) employed on October 26, 2008, third watch, 2:00 p.m. to 10:00 p.m., assigned to C SHU Contraband Surveillance Watch.

However, plaintiff has still not provided information for the following defendants, D. Fabela, B. Jones and J. Hernandez. Plaintiff's motion for extension of time to locate these unserved defendants is GRANTED.

If plaintiff fails to provide the court with the accurate and current information so that the Marshal can effect service, within **thirty (30) days** of the date this order is filed, plaintiff's claim against the above named defendants will be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. The dismissal will be without prejudice to plaintiff refiling his complaint with such information.

Defendant's motion for extension of time to file their dispositive motion is GRANTED. Defendant's dispositive motion is due on **October 8, 2010**. Plaintiff shall file his opposition to defendants' dispositive motion no later than **thirty (30) days** from the date defendants file their motion. Defendants shall file their reply no later than **fifteen (15) days** after plaintiff's opposition is filed.

This order terminates dockets nos. 74, 86 and 97.

IT IS SO ORDERED.

Dated: 11/30/10


RONALD M. WHYTE
United States District Judge